

SERVED: April 5, 1996

NTSB Order No. EA-4438

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of March, 1996

Petition of)

PAUL H. REDER)

for review of the denial by)
the Administrator of the)
Federal Aviation Administration)
of the issuance of an airman)
medical certificate.)

Docket SM-4173

OPINION AND ORDER

Petitioner has appealed from the order of Administrative Law Judge William E. Fowler, Jr., granting the Administrator's motion to dismiss petitioner's appeal for lack of jurisdiction.¹ As stated below, we deny the appeal and uphold the law judge's order.

By letter dated September 9, 1994, Dr. Audie W. Davis, Manager of the FAA Aeromedical Certification Division, denied

¹A copy of the order is attached. Petitioner filed a brief on appeal and the Administrator filed one in reply.

petitioner's application for a second-class medical certificate and a special issuance medical certificate.² Petitioner appealed the denial; however, on February 1, 1995, the law judge dismissed the appeal, finding that 1) petitioner had a specifically disqualifying condition and 2) the Board has no appellate jurisdiction over the Administrator's denial of a special issuance certificate. Petitioner did not appeal the law judge's order.

In April 1995, petitioner, seeking reconsideration of the denial of a special issuance medical certificate, submitted additional medical information to the Administrator; however, by letter dated June 20, 1995, the special issuance certificate was denied. The petitioner filed with the NTSB a petition to review this denial and, on September 19, 1995, the law judge again dismissed the petition for lack of jurisdiction. (Order Granting Administrator's Motion to Dismiss.)

Petitioner now appeals, arguing that the NTSB has the authority to review the denial of a special issuance medical certificate because the denial was arbitrary and capricious.

²Dr. Davis explained that petitioner was disqualified under paragraphs (d)(2)(i)(b), (d)(2)(ii), (e)(1)(i) and (e)(1)(iii) of sections 67.13, 67.15, and 67.17 of the Federal Aviation Regulations (FARs), based on his "history and clinical diagnosis of myocardial infarction and coronary artery disease which required treatment (coronary artery bypass surgery), cerebral aneurysms complicated by subarachnoid hemorrhage and treated by multiple craniotomies. You also have a history of multiple episodes of altered consciousness without satisfactory medical explanation of the cause." (Petition for Review of Denial by Administrator of a Special Issuance Medical Certificate, dated August 18, 1995, Exhibit B.)

Board precedent, however, says otherwise. See Petition of Peterson, NTSB Order No. EA-4216 at 5 (1994); Petition of Doe, 5 NTSB 41, 43 (1985).

To support his argument, petitioner relies on Priority Air Dispatch v. NTSB, 514 F.2d 1135 (D.C. Cir. 1975), where the court found that the NTSB could review the revocation of an airline exemption when the exemption is an essential component of its operating authority.³ Petitioner asserts that the NTSB has the authority to review his case because the denial of the special

³In Priority, the FAA had granted Priority Air Dispatch (Priority) an operating certificate and an exemption simultaneously, both of which were necessary for Priority to engage in the business of transporting hazardous waste. Several years later, the FAA terminated the exemption, effective immediately, and issued a revocation order against its operating certificate. The court found that the same logic which permitted the Board to have jurisdiction over revocations of ratings and authorizations, namely, that ratings and authorizations are "inextricably entwined" with the certificates, applied in Priority's case. Since the revocation of Priority's exemption altered its operating authority, the Board was required to review the FAA's action. Id. at 1337-38.

Priority can thus be broadly read for the proposition that the Board can hear challenges to the Administrator's curtailment of operating authority, whether enjoyed pursuant to exemption or certificate, since the Federal Aviation Act of 1958 contemplates that operating authority of indefinite duration will not be taken away by the Administrator without opportunity for Board review of the justification offered for such action. Here, however, it is not the Administrator's actions that have curtailed petitioner's ability to exercise the operating authority he continues to hold.

Rather, petitioner has been grounded by his own undisputed inability to satisfy a periodic obligation to demonstrate medical qualification pursuant to regulations whose contested application the Board clearly can resolve if called upon to do so. Priority provides no support for the contention that the Board is empowered to pass on the validity of the Administrator's determinations as to which airman should receive medical certification despite his ineligibility under published standards.

issuance certificate relates to an "essential component" of his "operating authority." Petitioner's argument, however, though creative, is unavailing. While the Board is empowered, under 49 U.S.C. section 44703(c), to review the denial of an airman certificate by determining whether an airman meets the objective standards set forth in 49 C.F.R. sections 67.13, 67.15, and 67.17, the granting of a special issuance certificate, under 49 C.F.R. section 67.19, is completely within the Administrator's discretion and, thus, not subject to Board review.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The law judge's order dismissing the appeal is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴See generally Special Issuance of Airman Medical Certificates, 47 Fed. Reg. 16,298 (1982).